## STATE OF ILLINOIS SECRETARY OF STATE SECURITIES DEPARTMENT

IN THE MATTER OF:	)
JOSEPH P. McGIVNEY, Sr. (CRD#327740),	)
LESLIE J. WNUKOWSKI and EDWIN	)
KOZIOL, d/b/a J.P.M. INC, UNIQUE	) CASE NO. 0600457
STRATEGIES, INC., HEDGE	)
STRATEGIES, INC., JUST SHORT, INC.,	)
JPM OPTIONS, INC.	)
	_)

## **CONSENT ORDER OF PROHIBITION**

#### TO RESPONDENTS:

Joseph P. McGivney 9700 W. 197 <sup>th</sup> Street Suite 109 Mokena, Illinois 60448	Joseph P. McGivney 5558 Maple Lane Midlothian, Illinois 60445
Leslie Wnukowski 9700 W. 197 <sup>th</sup> Street Suite 109 Mokena, Illinois 60448	Leslie Wnukowski 5558 Maple Lane Midlothian, Illinois 60445
Edwin Koziol 9700 W. 197 <sup>th</sup> Street Suite 109 Mokena, Illinois 60448	Edwin Koziol 8907 South Melvina St. Oak Lawn, Illinois 60453

WHEREAS, on June 4, 2010, a Notice of Hearing was issued against **Joseph P.**McGivney, Edwin Koziol, Leslie Wnukowski, and their various unincorporated business alter egos: JPM; Unique Strategies; Hedge Strategies; Just Short; and JPM Options.

WHEREAS, Joseph P. McGivney, Leslie Wnukowski, and Edwin Koziol desire to resolve this matter without incurring the costs and uncertainty of protracted litigation, and in consideration of a review of the evidence that would have been presented in a hearing in conjunction with the preponderance of the evidence standard set as the Illinois Securities Department's burden of proof stated in Section 130.1124 of the Rules and Regulations Under the Illinois Securities Law of 1953, have agreed to the entry of this Order by executing a certain Stipulation to Enter Consent Order (the "Stipulation"), which is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Joseph P. McGivney, Leslie Wnukowski and Edwin Koziol have admitted to the jurisdiction of the Secretary of State in this matter and have consented to the entry of this Consent Order ("Consent Order").

WHEREAS, by means of the Stipulation, Joseph P. McGivney, Leslie Wnukowski and Edwin Koziol, after review of the evidence presented and in light of the applicable preponderance of the evidence standard required for an administrative and civil finding of a violation of the Illinois Securities Act of 1953, but in no way to be construed as applicable to any higher legal standard, be it criminal or otherwise, admit to the following allegations and acknowledge that they shall be adopted as the Secretary of State's Findings of Fact:

#### BACKGROUND AND RESPONDENTS' REGULATORY HISTORIES

- 1. Respondent **Joseph P. McGivney**, **Sr**. (hereinafter, "**MCGIVNEY**") is a resident of Illinois with a last known address of 5558 Maple Lane, Midlothian, Illinois, 60445. MCGIVNEY has not been registered to offer or sell securities in the State of Illinois, nor has he been for at least ten years.
- 2. Respondent **Leslie J. Wnukowski** (hereinafter, "WNUKOWSKI") is a resident of Illinois that resides at 5558 Maple Lane with MCGIVNEY. WNUKOWSKI is not registered to offer or sell securities in Illinois.
- 3. Respondent Edwin Koziol ("KOZIOL") has been an associate of MCGIVNEY and WNUKOWSKI for at least twelve years and is paid by RESPONDENTS to assist in managing the various investments detailed below. KOZIOL has a last known address of 8907 South Melvina in Oak Lawn, Illinois 60453.
- 4. MCGIVNEY and WNUKOWSKI do business as various, now unincorporated, entities.
- 5. Unique Strategies, Inc. (hereinafter, "UNIQUE") was a Nevada Corporation that has been permanently revoked from doing business in Nevada since 2008 for non-payment of fees. WNUKOWSKI is the President, Secretary, and Treasurer of UNIQUE. UNIQUE is

- under the control of MCGIVNEY and WNUKOWSKI. UNIQUE operates from 9700 West 197<sup>th</sup> in Mokena, Illinois, 60448.
- 6. **Hedge Strategies, Inc.** (hereinafter, "**HEDGE**") was a Nevada Corporation that has been revoked from doing business in Nevada since 2009 for non-payment of fees. Both WNUKOWSKI and MCGIVNEY are listed as the President, and WNUKOWSKI is the Secretary and Treasurer. HEDGE is under the control of MCGIVNEY and WNUKOWSKI. HEDGE operates from 9700 West 197<sup>th</sup> in Mokena, Illinois, 60448.
- 7. **J.P.M., Inc.** (hereinafter, "**JPM**") was a Nevada Corporation that has been revoked from doing business in Nevada since 2009 for non-payment of fees. WNUKOWSKI is the President, Secretary, and Treasurer of JPM. JPM is under the control of MCGIVNEY and WNUKOWSKI. JPM operates from 9700 West 197<sup>th</sup> in Mokena, Illinois, 60448.
- 8. **JPM Options, Inc.** (hereinafter "**OPTIONS**") is a Nevada Corporation whose status is in Default. WNUKOWSKI is the President, Secretary and Treasurer of OPTIONS. OPTIONS is under the control of MCGIVNEY and WNUKOWSKI. OPTIONS operates from 9700 West 197<sup>th</sup> in Mokena, Illinois, 60448.
- 9. **Just Short, Inc.** (hereinafter, "**JUST SHORT**") is a business entity with no articles of incorporation on record. JUST SHORT is under the control of MCGIVNEY and WNUKOWSKI. JUST SHORT operates from 9700 West 197<sup>th</sup> in Mokena, Illinois, 60448.
- 10. WNUKOWSKI, as the president of UNIQUE, HEDGE, JPM and OPTIONS, was responsible to maintain and enforce written procedures, as well as supervise the activities of her salespeople, that are reasonably designed to achieve compliance with the applicable securities laws and regulations.
- 11. MCGIVNEY and WNUKOWSKI maintain bank accounts for UNIQUE, HEDGE, JPM, OPTIONS, JUST SHORT. Both MCGIVNEY and WNUKOWSKI have signatory authority over each account. KOZIOL was also allowed to draft checks from the HEDGE, JPM, OPTIONS, and JUST SHORT accounts.
- 12. In 1974 the Securities and Exchange Commission issued an Order against MCGIVNEY and his company, McGivney and Company, postponing the investment adviser registration of McGivney and Company, Inc., of Hickory Hills, Illinois, for a period of six months beginning March 1, 1974; censuring and Associates, Inc., a registered broker-dealer; suspending MCGIVNEY, the firms' president, from association with any broker-dealer, investment adviser or investment company for a period of six months beginning February 15, 1974; The sanctions were based on findings that from about February 1971 through 1972 McGivney and Company and MCGIVNEY, Goodman and Harris, who were associated with Joseph P. McGivney and Associates, unlawfully sold unregistered investment contracts for scotch whisky warehouse receipts. In the offer, sale and purchase of such contracts, they made material misrepresentation concerning, among other things, the annual return to be expected on them, their suitability to the needs of

individual customers, their marketability, the firm's markups over cost, and the risk of overproduction of scotch grain whisky. The Commission also found that and Company, aided and abetted by MCGIVNEY, Goodman and Harris, acted as a broker and dealer without being registered as such. The respondents submitted an offer of settlement consenting to the findings and sanctions without admitting or denying the allegations contained in the order for proceedings.

- 13. In 1985 the Securities and Exchange Commission obtained a permanent order of prohibition from violating Federal securities laws against MCGIVNEY from the Federal Court, Northern District of Illinois. MCGIVNEY consented to the entry of the Order, without admitting or denying the allegations of the Complaint wherein it was alleged that MCGIVNEY violated the antifraud provisions of the Federal Securities Law in the offer and sale of promissory notes. The Complaint also alleged that during the period from April 1981 through June 1984, MCGIVNEY personally, or through J.P.M. Industries, a company in which MCGIVNEY was the majority shareholder, issued three series of promissory notes to approximately 500 investors and raised over \$11,000,000.00. The Complaint further alleged that MCGIVNEY omitted to state to investors that he could not redeem the notes without raising funds through the offer and sale of additional promissory notes or obtaining funds from other outside sources. In addition investors in two series were told that the notes would be collateralized with an assignment of stock owned by MCGIVNEY. However, MCGIVNEY never gave such an assignment. Finally, the investors in the third series of promissory notes were told that they would be given mortgage liens on properties owned by J.P.M. Industries. MCGIVNEY however, never executed or recorded any such liens on those properties nor did he cause J.P.M. Industries to do so. (SEC v. McGivney, N.D. IL., 85-C-2255).
- 14. In 1988 the Florida Division of Securities instituted an administrative action against MCGIVNEY, among other respondents, for selling securities from an unregistered branch office in Florida, numerous book and records violations, inadequate supervisory procedures, and numerous prohibited business practices related to the offer and sale of securities in Florida. In 1990 MCGIVNEY consented to discontinue brokerage services in Florida.
- In 1999 MCGIVNEY and KOZIOL were civilly sued by the Commodity Futures Trading Commission for operating a \$1,000,000.00 investment program wherein MCGIVNEY and KOZIOL solicited investors to invest into a commodity pool. The Complaint alleged that the Defendants never invested their victims' money into any commodity pool, but instead commingled the money and used it to finance their lifestyles. MCGIVNEY and KOZIOL settled the case agreeing, among other things, to pay restitution to their victims. (CFTC v Joseph McGivney, et al., 99 C 2357). In that same matter WNUKOWSKI was named a relief defendant.
- 16. MCGIVNEY and KOZIOL have not paid restitution to investors as they had agreed to in the Consent Order they entered into with the CFTC and the United States District Court.

# McGivney violated the Order of Prohibition issued against him by the Department

- 17. On July 11, 2008, a Temporary Order of Prohibition was issued by the Illinois Securities Department (the "Department") against MCGIVNEY and JPM. The Order prohibited MCGIVNEY and JPM from offering or selling securities for at least 90 days.
- 18. Despite the issuance of the Temporary Order of Prohibition MCGIVNEY continued to solicit investors for the purported investments, described below. At least \$87,000.00 was obtained from investors during the period of prohibition.

### Respondents' Current "Investment Programs"

- 19. MCGIVNEY and WNUKOWSKI, after settling the 1999 CFTC's civil action continued to obtain investor money into their various entities, promising to pay interest on the principal as high as 30% per year.
- 20. Since 2005 MCGIVNEY and WNUKOWSKI have obtained in excess of \$3,087,557.00 from at least forty-five investors located in several states including Illinois, Wisconsin, Kentucky, Arizona, and California, through the offer and sale of unregistered investment notes ("Notes") and unregistered stock for UNIQUE, HEDGE, JPM, OPTIONS, and JUST SHORT.
- 21. Nearly all the money held in the various accounts under RESPONDENTS' control was derived from investors, that is, there was no other significant source of income for the RESPONDENTS except for investor money.
- 22. RESPONDENTS did not register the Notes or stock with the Illinois Secretary of State.
- 23. MCGIVNEY represented to the investors that the money would be used for business purposes; telling most investors that MCGIVNEY was developing a trading platform.
- 24. MCGIVNEY also told at least two individuals that he would utilize his trading formula to manage their investment accounts.
- 25. Investor money was co-mingled in RESPONDENTS' various bank accounts regardless of the particular MCGIVNEY business entity that the investor had provided loans to or purchase stock in.
- 26. Investor money was frequently transferred between RESPONDENTS' various bank accounts, including WNUKOWSKI's personal bank account, regardless of the particular MCGIVNEY business entity that the investor had provided loans to or purchase stock in.
- 27. RESPONDENTS used the Investors' money to pay off some of the Notes held by other investors that had matured.

- 28. MCGIVNEY, in his Sworn Statement, testified that neither he nor WNUKOWSKI derived any salary for their work as executives.
- 29. However, the investor money that had not been used to pay mature notes sold to previous investors was used to finance MCGIVNEY and WNUKOWSKI's lifestyles.

# Respondents Omitted to Disclose Material Information to Investors

- 30. MCGIVNEY omitted to disclose to some investors that their money would be used to pay off other investors' investments into RESPONDENTS' companies.
- 31. MCGIVNEY omitted to disclose to some investors that for RESPONDENTS to pay according to the terms of the Notes or to redeem their stock, RESPONDENTS would have to sell more investment Notes to new or existing investors.
- 32. MCGIVNEY and omitted to disclose to some investors that RESPONDENTS would use investor money to finance their lifestyle and pay their personal bills and debt.
- 33. MCGIVNEY omitted to disclose to some investors that UNIQUE, HEDGE, JPM, OPTIONS, and JUST SHORT had lost their corporate status through involuntary dissolution.
- 34. MCGIVNEY omitted to disclose to some investors that their money would be co-mingled with other investor money in bank accounts not held by the particular MCGIVNEY business entity they were purportedly loaning money to or purchasing stock in.
- 35. MCGIVNEY omitted to disclose to some investors of his regulatory history, in particular, that he and KOZIOL had been named RESPONDENTS in the CFTC civil suit of their commodities investment program in 1999 and had entered a consent order.
- 36. MCGIVNEY, in his Sworn Statement to the Department, states that he did not disclose Respondents' regulatory history to some investors.

# Respondents had no written procedures designed to achieve compliance with applicable securities laws, nor did they follow any procedures to do the same

- 37. RESPONDENTS have no written procedures reasonably designed to achieve compliance with applicable securities laws and regulations.
- 38. WNUKOWSKI, as President for the various entities described above, never has enforced any procedure, rule or policy to ensure that MCGIVNEY and KOZIOL are complying with the applicable securities laws and regulations.

39. WNUKOWSKI, as the principal officer of MCGIVNEY and KOZIOL, did not supervise the securities activities of MCGIVNEY and KOZIOL.

#### Several Investors' Investments with and through Respondents

40. Investors 1-4, described below, are not the only investors of RESPONDENTS, but their relationship with these investors typify the manner in which RESPONDENTS have violated the Illinois Securities Act: as such, the violations described in this Consent Order are not limited to RESPONDENTS' relationship with these investors.

#### Investor\_1

- 41. Investor 1 is a resident of Illinois who, in 2001, was introduced to MCGIVNEY through a mutual friend.
- 42. In 2002 MCGIVNEY solicited Investor 1 to invest with MCGIVNEY's company, UNIQUE, in the form of a short-term loan.
- 43. MCGIVNEY told Investor 1 that the loan was to finance MCGIVNEY's development of a proprietary trading platform and that the money would be used to pay employees and lawyer fees.
- 44. MCGIVNEY also told Investor 1 that he would be "going public" with his company.
- 45. In December of 2002 Investor 1 entered into a short term loan agreement (a "Note"), providing \$33,475.00 to UNIQUE for the development of the trading platform. This Note provided that Investor 1 would receive a return of 30% per year and would mature on March 1, 2003.
- 46. Investor 1 did receive his initial investment, with interest.
- 47. Investor 1 continued to provide RESPONDENTS with loans, providing MCGIVNEY a check written out to JPM for \$10,000.00 in October of 2004.
- 48. MCGIVNEY agreed to pay Investor 1 \$800.00 per month until the loan was paid back.
- 49. One month later, in November of 2004, Investor 1 provided MCGIVNEY a check for \$110,000.00 written to JPM for a Private Placement Offering into JPM. \$35,000.00 of this transaction was Investor 1's money, the balance having been obtained from thirteen friends and relatives.
- 50. Six months later, in June of 2005, Investor 1 invested another \$10,000.00 into JPM.
- From June of 2005 through 2009 Investor 1 received monthly payments of \$800.00 and \$1,600.00 from RESPONDENTS.

- 52. During that time, from 2005 through 2009, Investor 1 also invested an additional \$77,000.00 with RESPONDENTS, including a \$10,000.00 investment in April of 2008.
- 53. However, Investor 1's money was commingled with other investors' money, in multiple business accounts and used to pay earlier Investors as well as RESPONDENTS' personal bills.
- 54. For instance, on April 14, 2008, when Investor 1 invested an additional \$10,000.00 with RESPONDENTS, the money was deposited into the JUST SHORT account, and the very next day:
  - a. The account was debited \$39.00 for an overdraft fee due to the account having no funds prior to the deposit; WNUKOWSKI wrote herself a check for \$7,500.00 from the account; a different investor was paid \$4,900.00; and \$58.00 dollars was spent at a gas station.
  - b. On April 16, 2008, the JUST SHORT account was debited \$500.00 to pay a different investor, and a \$200.00 cash withdrawal was made from an ATM.
  - c. On April 18, \$400.00 was paid to KOZIOL, and \$500.00 transferred to the HEDGE account to cover overdrafts made in that account.
  - d. On April 21, \$1000.00 was paid to a different investor, \$130.00 spent at Jewel Grocery Store, \$126.00 was spent at Harrah's Casino with an additional \$400.00 cash withdrawal made from an ATM at the casino, and \$60.00 was spent at a hair salon.
  - e. On April 22, \$1650.00 was transferred to a relative of MCGIVNEY.
  - f. On April 23, \$500.00 was paid to another investor, and \$62.00 was withdrawn from an ATM.
  - g. On April 29, \$126.00 was spent at Mr. Benny's Steakhouse, WNUKOWSKI issued two checks to Investor 1 for \$10,000.00 and \$1,000.00, both of which were not honored due to insufficient funds.
  - h. On April 30, a \$1,132.25 payment for a life insurance premium was made, a \$500.00 payment to a different investor was also made, both payments caused an overdraft and resulted in a \$39.00 bank fee for each check.
  - i. On May 16, 2008, Investor 1 would receive a check signed by MCGIVNEY for \$12,000.00 drawn from the JUST SHORT account. However, since RESPONDENTS had spent all of the investor money in that account, Investor 1 was paid from money taken from another investor whose \$70,000.00 was deposited into the JUST SHORT account on May 15.

- 55. Investor 1 invested at least \$136,625.00 from his first investment with RESPONDENTS through August of 2008.
- 56. At no time did RESPONDENTS disclose to Investor 1 that:
  - a. Investor 1's money would be comingled and transferred to other MCGIVNEY business entities:
  - b. Investor 1's money would be used to pay RESPONDENTS' personal bills and to finance their lifestyles: or
  - c. that the primary source of revenue for the businesses was investor money.
- 57. At no time prior to the offer and sale of the investments to Investor 1 did MCGIVNEY specifically disclose: 1) that he had been civilly sued by the CFTC and SEC for fraud, 2) that he had been prohibited from offering and selling commodities and violating the securities laws, or 3) that RESPONDENTS were required to return investor money pursuant to consent orders MCGIVNEY and KOZIOL had entered into.

#### Investor 2

- 58. Investor 2 is a resident of Illinois who was introduced to MCGIVNEY through a mutual friend.
- 59. In March of 2005 MCGIVNEY solicited Investor 2 to invest in JPM.
- 60. MCGIVNEY told Investor 2 that he was creating a trading platform, and eventually his company would go public.
- 61. Investor 2 provided MCGIVNEY with \$50,000.00 in exchange for 52,000 shares of JPM stock.
- 62. On March 23, 2005, the \$50,000.00 was deposited into the JPM account.
- 63. In April of 2005 MCGIVNEY sent Investor 2 a stock certificate indicating ownership of 52,000 shares of JPM stock, signed by MCGIVNEY as the president of JPM.
- 64. In May of 2005 MCGIVNEY solicited Investor 2 for a short-term loan for JPM (the "Note").
- 65. Investor 2 provided MCGIVNEY with \$100,000.00 for the Note, becoming due in one year at 20% interest paid quarterly.
- On May 12, 2005, the \$100,000.00 was deposited into the JPM account.

- 67. In September and December of 2005, and June and July of 2006, Investor 2 received two checks drawn on the JPM account and signed by WNUKOWSKI and MCGIVNEY, respectively, for the quarterly interest payments for the Note. These payments were late, and required Investor 2 to contact MCGIVNEY for payment.
- 68. In each circumstance the checks referred to in paragraph 67, above, were drawn from the proceeds of other investors' money deposited into the JPM account.
- 69. On March 3, 2006, WNUKOWSKI wrote a check drawn from the JPM account for \$5,000.00 made out to Investor 2.
- 70. The check was not honored due to non-sufficient funds in the account.
- 71. Investor 2 repeatedly contacted MCGIVNEY and KOZIOL to demand his payments.
- 72. On January 29, 2007, eight months after the Note with interest was due in full, MCGIVNEY wrote a check to Investor 2 drawn from the JUST SHORT account for \$12,200.00.
- 73. Investor 2 attempted to deposit the check, but RESPONDENTS had issued a stop payment on it.
- 74. Investor 2 repeatedly attempted to contact MCGIVNEY to demand his money.
- 75. Investor 2 contacted the Illinois Attorney General to lodge a complaint regarding RESPONDENTS' refusal to pay Investor 2.
- 76. MCGIVNEY, in a written correspondence to the Attorney General's inquiry into the complaint, stated that there was a delay in paying Investor 2 and that Investor 2 would be paid within 90 days.
- 77. However, MCGIVNEY never resolved the complaint and never paid Investor 2.
- 78. RESPONDENTS had used Investor 2's money to finance their own lifestyle and to pay other investors.
- 79. For instance, in the days after March 23, 2005, when the \$50,000.00 Investor 2 paid for the stock was deposited into the JPM account, RESPONDENTS used the proceeds for the following purposes:
  - a. On March 28, 2005, WNUKOWSKI wrote two checks to herself for \$5,200.00 and \$2,000.00, respectively.
  - b. On March 29, 2005, a different investor was paid \$1,000.00.

- c. On March 30, 2005, \$2,000.00 was transferred to the UNIQUE STRATEGIES account, and \$1,500.00 paid to another investor.
- d. On March 31, 2005, \$78.19 was spent at Bogart's Steakhouse in Tinley Park.
- e. On April 1, 2005, MCGIVNEY wrote a check to himself for \$375.00, and \$1,077.00 was paid to another investor.
- f. On April 4, 2005, \$765.00 and \$700.00 were paid to two other investors, respectively, and \$78.35 was spent at Rocco's Little Italy restaurant.
- g. On April 5, 2005, \$300.00 was withdrawn from an ATM, \$31.26 was spent at the Kingsberry Wafflehouse in Oak forest, and \$53.62 was spent at Champ's Restaurant in Orland Park.
- h. On April 6, 2005, \$2,500.00 was paid to another investor, \$300.00 was withdrawn from an ATM and \$116.99 was spent at Harrah's Casino in Joliet.
- i. On April 7, 2005, \$84.84 was spent at Bogart's in Tinley Park, \$42.83 at a gas station in Oak Forest, \$1,000.00 was paid to another investor and \$76.70 was spent at the Tobacco House in Frankfurt, Illinois.
- j. On April 8, 2005, \$800.00 was paid to Investor 1, \$600.00 and \$800.00 checks were issued to two other investors, and \$117.55 was spent to pay for a Mutual of Omaha insurance premium.
- 80. Similarly, the \$100,000.00 that Investor 2 provided as a short-term loan and that was deposited into the JPM account on May 12, 2005, was used for the following purposes:
  - a. On May 16, 2005, \$503.50 was withdrawn from the ATM at Harrah's Casino in Joliet, Illinois.
  - b. On May 18, 2005, \$1,200.00 was paid to another investor, and \$70.70 was spent at the Tobacco House in Frankfort, Illinois.
  - c. On May 19, 2005, \$1,400.00 was paid to a relative of KOZIOL.
  - d. On May 20, 2005, \$600.00 was paid to another investor.
  - e. On May 23, 2005, \$300.00 was withdrawn through two ATMs, \$1,000.00 was paid to another investor, and \$241.07 was paid to MCGIVNEY's internet provider.
  - f. On May 24, 2005, \$45.91 was spent at Jewel Grocery Store in Oak Forest, \$202.00 was withdrawn from an ATM in Oak Forest, \$62.46 was spent at Calumet Paint and Wallpaper in Oak Forest, a check for \$14,000.00 written to

- WNUKOWSKI by WNUKOWSKI was cashed, \$93.00 was spent at the Silver Lakes Golf Club, and \$21.11 was spent at Home Depot in Orland Park.
- g. On May 25, 2005, \$114.71 was spent at Jack Gibbon's Garden and Steakhouse in Oak Forest, \$144.00 was spent at Odyssey Country Club in Tinley Park, and \$894.00 was spent on an internet service provider.
- h. On May 31, 2005, \$200.00 was withdrawn from an ATM in Oak Forest, \$90.50 was spent at Jewel Grocery Store in Oak Forest, a check for \$1,000.00 written to WNUKOWSKI by WNUKOWSKI was cashed, and\$103.94 was spent at Rocco's Little Italy Restaurant.
- i. On June 1, 2005, \$104.02 was spent at Target in Crestwood, \$43.03 was spent at a gas station in Oak Lawn, \$1,850.00 was paid to another investor, \$1,000.00 was transferred to the UNIQUE account, \$82.16 was spent at Jack Gibbon's Garden and Steak House in Oak Forest, \$117.55 was paid to Mutual of Omaha for an insurance premium, \$153.07 was spent at the Red Door Spa in Chicago, Illinois, and \$1,200.00 was paid to another investor.
- 81. Investor 2 invested at least \$150,000.00 with RESPONDENTS.
- 82. RESPONDENTS have failed to pay Investor 2 his principal and interest as required under the terms of the Note, and as MCGIVNEY had represented to the Illinois Attorney General.
- 83. At no time did RESPONDENTS disclose to Investor 2 that:
  - a. Investor 2's money would be used to pay earlier investors;
  - b. Investor 2's money would be comingled and transferred to other MCGIVNEY business entities;
  - c. Investor 2's money would be used to pay RESPONDENTS' personal bills and to finance their lifestyles;
  - d. the only source of revenue for the businesses was investor money; or
  - e. that Investor 2's investment would be repaid from funds acquired from other investors.
- 84. At no time prior to the offer and sale of the investment to Investor 2 did MCGIVNEY Specifically disclose that 1) he had been civilly sued by the CFTC and SEC for securities fraud, 2) that he had been prohibited from offering and selling commodities and from violating securities laws, or 3) that he was required to return investor money pursuant to consent orders MCGIVNEY and KOZIOL had entered into.

#### Investors 3 and 4

- 85. Investors 3 and 4 are an elderly couple, over 90 years of age, that reside in Kentucky. Investors 3 and 4 are in ill-health and depend on their money to pay for medical care.
- 86. Investors 3 and 4 had lost money investing with MCGIVNEY, WNUKOWSKI and KOZIOLs previous "investment programs," including in 2004 when MCGIVNEY solicited them to invest in UNIQUE which MCGIVNEY represented was to "develop a proprietary trading structure."
- 87. In December of 2008 MCGIVNEY solicited Investors 3 and 4 with an investment opportunity, telling Investors 3 and 4 that he felt badly for losing their money in the prior investments, but that he had developed an investing formula that could double their investment money in one year.
- 88. MCGIVNEY proposed that Investors 3 and 4 open an on-line brokerage account with Interactive Brokers and he would personally trade their account using his formula.
- 89. MCGIVNEY represented to Investors 3 and 4 that he would not charge them anything so that he could make up for the losses they suffered from the prior investments.
- 90. MCGIVNEY delivered to Investors 3 and 4 correspondence purporting to show three different accounts that he had managed and traded in using his "proprietary trading formula" which had resulted in substantial gains.
- 91. On November 24, 2008, using a computer under his or his associates' control, MCGIVNEY and KOZIOL opened an en-line margin account for Investors 3 and 4 with Interactive Brokers.
- 92. MCGIVNEY and KOZIOL did not disclose to Interactive Brokers that they, and not Investors 3 and 4, would initiate the purchase and sales of securities in the account.
- 93. On December 1, 2008, Investors 3 and 4, as per MCGIVNEY's instructions, wired \$50,000.00 of their savings to Interactive Brokers.
- 94. Investors 3 and 4 never received any statements or documentation for the account.
- 95. By establishing the account for Investors 3 and 4 MCGIVNEY and KOZIOL and not disclosing their activities to Interactive Brokers, MCGIVNEY and KOZIOL inhibited Interactive Brokers from performing its due diligence through a background check of them.
- 96. MCGIVNEY bought and sold stock options in the Account utilizing his proprietary investing formula in determining what options to purchase.

- 97. MCGIVNEY's proprietary formula resulted in a loss of almost \$40,000.00 to Investors 3 and 4 by June of 2009.
- 98. On December 13, 2008, MCGIVNEY faxed Investors 3 and 4 a transmittal on HEDGE letterhead which stated, "as discussed since 12/3 your closed profits are \$1,688.00 (8 days) increasing trading capital to \$51,688.00. The goal is to drive trading capital to \$100,000.00 by 3/3/09."
- 99. The Account had not been approved by Interactive Brokers until December 2, 2008, when MCGIVNEY proceeded to place almost half of the money into options, and his proprietary trading formula had resulted in a loss of approximately \$6,000.00 that month.
- 100. By April of 2009 MCGIVNEY's trading formula had lost more than \$16,000.00, and by July of 2009 he had lost over \$46,000.00 of Investor 3 and 4s' savings.
- 101. By March of 2009, when MCGIVNEY had projected a 100% return on Investor 3 and 4s' principal, Investors 3 and 4 began contacting MCGIVNEY to obtain their money so they could pay for their medical services.
- 102. Investors 3 and 4 informed MCGIVNEY that they desperately needed \$25,000.00 to pay for medical expenses.
- 103. In May of 2009, MCGIVNEY caused \$6,000.00 to be wired from Investor 3 and 4s' Interactive Brokers Account to their personal bank account.
- 104. MCGIVNEY also drew a check from the JUST SHORT account for \$19,000.00 and mailed it to Investors 3 and 4.
- 105. The money MCGIVNEY drew from the JUST SHORT account was derived from money invested by others for the purported development of the trading platform.
- 106. Investors 3 and 4 would contact MCGIVNEY again, in late 2009 through early 2010 to request the rest of their money to pay medical expenses.
- 107. KOZIOL informed Investors that MCGIVNEY's company was getting ready to go public, causing a delay in paying them, but that they would get their money.
- 108. In March of 2010 Investors 3 and 4 received a check drawn on the JUST SHORT account and signed by MCGIVNEY for the amount of \$11,000.00.
- 109. However, the check for \$11,000.00 was not honored for insufficient funds in the JUST SHORT account.
- 110. RESPONDENTS have since failed to pay Investors 3 and 4 their money.
- 111. At no time did MCGIVNEY disclose to Investors 3 and 4 that:

- a. MCGIVNEY and KOZIOL are not licensed or registered to act as a brokers, investment advisors or salespeople of securities;
- b. Investors 3 and 4 might be paid from money derived from investors into RESPONDENTS' trading platform investment program; or
- c. that MCGIVNEY had lost their \$50,000.00 with high-risk trading he had effected in the Account.
- 112. At no time did MCGIVNEY provide Investors 3 and 4 with accurate statements of their Interactive Brokers account he had traded in.
- 113. At no time prior to the offer and sale of the investment advisory services to Investors 3 and 4 did MCGIVNEY disclose that 1) he had been civilly sued by the CFTC and SEC for securities fraud, 2) that he had been prohibited from offering and selling commodities and from violating the securities laws, or 3) that he was required to return investor money pursuant to consent orders MCGIVNEY and KOZIOL had entered into.

WHEREAS, by means of the Stipulation, JOSEPH P. MCGIVNEY, LESLIE WNUKOWSKI and EDWIN KOZIOL, after review of the evidence presented and in light of the applicable preponderance of the evidence standard required for administrative and civil findings of a violation of the Illinois Securities Act of 1953, but in no way to be construed as applicable to any higher legal standard be it criminal or otherwise, admit to the following conclusions of law and violations of the Illinois Securities Law of 1953, and acknowledged that the following shall be adopted as the Secretary of State's Conclusions of Law:

#### APPLICABLE LAW

- 1. The offer and sale of investment notes, short-term loans and stock to investors by RESPONDENTS constitute the "Offer" and "Sale" of "Securities" as defined by Sections 2.5(a), 2.5 and 2.1 of the Illinois Securities Law of 1953 (the "Act").
- 2. RESPONDENTS' establishment of brokerage accounts, and effecting purchases of securities therein, for certain investors, constitute the sale of securities as defined by Sections 2.5 and 2.1 of the Act as well as the activities of a "salesperson" of securities as defined by Section 2.9 of the Act.
- 3. Section 12.A of the Act provides that it shall be a violation of the provisions of this Act for any person to offer or sell any security except in accordance with the provisions of this Act.
- 4. Section 5 of the Act provides that all securities offered or sold in Illinois shall be registered with the Secretary of State prior to their offer or sale in Illinois.

- 5. Section 8.A of the Act provides that every salesperson of securities, investment advisor and investment advisor representative shall be registered as such with the Secretary of State.
- 6. Section 12.C of the Act provides part that it shall be a violation of the Act for any person to act as a dealer, salesperson, investment advisor, or investment advisor representative, unless registered as such, where such registration is required, under the provisions of the Act.
- 7. Section 12.D of the Act provides that it shall be a violation of the Act for any person to fail to file with the Secretary of State any application, report or document required to be filed under the provisions of the Act or any rule or regulation made pursuant to the Act or to fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11 of the Act.
- 8. Section 12.F of the Act provides that it shall be a violation of the Act for any person to engage in any transaction, practice or course of business in conjunction with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.
- 9. Section 12.G of the Act provides that it shall be a violation of the Act for any person to obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
- 10. Section 12.H of the Act provides that it shall be a violation of the Act for any person to sign or circulate any statement, prospectus, or other paper document required by any provision of the Act or pertaining to any security knowing or having reasonable grounds to know any material representation therein to be false or untrue.
- 11. Section 12.1 of the Act provides that it shall be a violation of the provisions of the Act for any person to employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly.
- 12. Section 11.F of the Act provides that the Secretary of State may permanently prohibit a person from offering and selling securities in Illinois after an opportunity for hearing.

#### VIOLATIONS

#### Failure to Register

13. MCGIVNEY, for offering and selling unregistered securities in the State of Illinois, violated Sections 12.D and 12.A of the Act.

14. MCGIVNEY, for offering and selling securities in Illinois without being registered as a salesperson, violated Sections 12.C, 12.D and 12.A of the Act.

#### Securities Fraud

- 15. MCGIVNEY, for failing to disclose to some investors that:
  - a. their investment money into the various entities described above would be used to pay other investors;
  - b. that the money would be used to pay RESPONDENTS' personal bills and to finance their lifestyles; or
  - c. that their investments would be repaid from funds acquired from other investors, if paid at all

violated Sections 12.F, G and A of the Act for each offer and sale of short-term loans and stock to each investor.

- 16. MCGIVNEY, for failing to disclose to some investors of his regulatory history, in particular, the 1999 CFTC action against him and KOZIOL, and the 1985 SEC fraud action against MCGIVNEY, violated Sections 12.G and 12.A of the Act.
- 17. MCGIVNEY, for each purchase or sale of a security MCGIVNEY instituted in the brokerage account of Investor 3 & 4, and those other persons similarly situated, violated Sections 12.C, 12.F, and 12.A of the Act.
- 18. MCGIVNEY and WNUKOWSKI, for negligently issuing checks to investors from the JUST SHORT, JPM, and HEDGE accounts when those accounts did not have funds to pay constitute violations of Sections 12.I and 12.A of the Act for each dishonored check issued.
- 19. MCGIVNEY, for providing a false statement to the Illinois Attorney General regarding Investor 2's complaint constitutes a violation of Section 12.I of the Act.
- 20. KOZIOL, for making affirmative misstatements of material fact to Investors 3 and 4, and establishing the Interactive Brokerage account without disclosing that Investors 3 and 4 would not be instituting the trades therein, violated Sections 12.F and 12.A of the Act.

#### NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1.) **JOSEPH P. MCGIVNEY** is **PERMANENTLY PROHIBITED** from offering to sell or selling to any member of the public any securities, and is prohibited from acting as a

salesperson of securities, broker of securities or investment advisor in or from the State of Illinois.

- 2.) **LESLIE WNUKOWSKI** is **PROHIBITED** for a period of five years from offering to sell or selling to any member of the public any securities, and, for a period of five years, is prohibited from acting as a salesperson of securities, broker of securities or investment advisor in or from the State of Illinois. <sup>1</sup>
- 3.) JOSEPH P. MCGIVNEY, LESLIE WNUKOWSKI and EDWIN KOZIOL shall, within 180 days of the entry of this Order, pay by certified check to the Secretary of State of Illinois, Audit and Enforcement Fund, the sum of \$25,000.00 as a fine for the multiple violations of the Illinois Securities Act; and
- 4.) The formal hearing, as it pertains to JOSPEH P. MCGIVNEY, LESLIE WNUKOWSKI and EDWIN KOZIOL is DISMISSED.

ENTERED: This 25th day of February, 2011.

JESSE WHITE Secretary of State State of Illinois

NOTICE: Failure to comply with the terms of this Order shall be a violation of Section 12.D of the ACT. Any person or entity that fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of this Order, shall be guilty of a Class 4 felony for each offense.

This is a final order subject to administrative review pursuant to the Administrative Review Law [735 ILCS 5/3-101 et seq.] and the Rules and Regulations of the Act (14 III. Admin. Code, Ch. 1 Sec. 130.1123). Any action for judicial review must be commenced within thirty-five (35) days from the date a copy of this Order is served upon the party seeking review.

Attorney for the Department: Jason Chronopoulos 69 West Washington Street Suite 1220 Chicago, IL JChronopoulos@ILSOS.net

<sup>&</sup>lt;sup>1</sup> The prohibition does not apply to Respondent's personal investment accounts, those of her immediate family members, or for securities that qualify under rule 144 of the Securities Law of 1933.